

OCTOBER 2002

MJI Publication Updates

Crime Victim Rights Manual

Criminal Procedure Monograph 6—Pretrial Motions

Domestic Violence Benchbook (2d ed)

Friend of the Court Domestic Violence Resource Book

Juvenile Justice Benchbook

Sexual Assault Benchbook

Traffic Benchbook—Revised Edition, Volume 1

Traffic Benchbook—Revised Edition, Volume 2

Update: Crime Victim Rights Manual

CHAPTER 3

Overview of the Crime Victim's Rights Act

3.2 Definitions of Terms Used in the CVRA

A. "Assaultive Crime"

1. A conviction or adjudication for some "assaultive crimes" may not be set aside.

Effective October 1, 2002, 2002 PA 483 expanded the list of "assaultive crimes" in MCL 770.9a. The added offenses are:

- F Assault against Family Independence Agency employee causing serious bodily impairment, MCL 750.81c(3).
- F Intentional assaultive conduct against pregnant individual with intent to cause miscarriage or death to embryo or fetus, MCL 750.90a.
- F Intentional assaultive conduct against pregnant individual causing great bodily harm, serious or aggravated injury, or miscarriage or death to embryo or fetus, MCL 750.90b.
- F Attempted murder, MCL 750.91.
- F A violation of MCL 750.200 to 750.212a [governing explosives, bombs, and harmful devices].
- F Stalking, MCL 750.411h.
- F Aggravated stalking, MCL 750.411i.
- F A violation of MCL 750.543a to 750.543z [governing terrorist crimes].

CHAPTER 8

The Crime Victim at Trial

8.4 Adjournments or Continuances

Requests for adjournments and continuances may also be made under MCR 2.503(C), the court rule governing the granting of adjournments on the basis of the unavailability of a witness. In *People v Jackson*, ___ Mich ___ (2002), an armed robbery and felony-firearm case, the Michigan Supreme Court held that the trial court abused its discretion in denying a continuance after a key prosecution witness, who previously had submitted a statement to police and had testified at the preliminary examination, failed to appear on the date set for trial. The Supreme Court found that, contrary to the findings of the trial court and Court of Appeals, the prosecution did not fail to make “diligent efforts,” as required by MCR 2.503(C)(2), to produce the witness: the police had successfully served the subpoena, and the witness had previously cooperated with the police and prosecution. Thus, according to the Court, there was no reason to expect that the witness’s cooperation would not continue. The Court stated that it would “not require the prosecutor to assume that every witness is a flight risk who must be monitored to ensure his attendance at trial.” *Id.* at ____.

Update: Criminal Procedure Monograph 6—Pretrial Motions

Part 2—Individual Motions

6.10 Adjournment or Continuance

Requests for adjournments and continuances may also be made under MCR 2.503(C), the court rule governing the granting of adjournments on the basis of a witness's unavailability. In *People v Jackson*, ___ Mich ___ (2002), an armed robbery and felony-firearm case, the Michigan Supreme Court held that the trial court abused its discretion in denying a continuance after a key prosecution witness, who previously had submitted a statement to police and testified at the preliminary examination, failed to appear on the date set for trial. The Supreme Court found that, contrary to the findings of the trial court and Court of Appeals, the prosecution did not fail to make "diligent efforts," as required by MCR 2.503(C)(2), to produce the witness. The Court stated that it did not know what further efforts could have been made to produce the witness: the police had successfully served the subpoena, and the witness had previously cooperated with the police and prosecution. Thus, according to the Court, there was no reason to expect that the witness's cooperation would not continue. The Court concluded by noting that it would "not require the prosecutor to assume that every witness is a flight risk who must be monitored to ensure his attendance at trial." *Id.* at ___.

Update: Domestic Violence Benchbook (2d ed)

CHAPTER 5

Evidence in Criminal Domestic Violence Cases

5.12 Evidence of Other Crimes, Wrongs, or Acts Under MRE 404(b)

C. Other Acts Evidence in Family Violence Cases

Insert the following case summary as the second bullet in Section 5.12(C), after the summary of the *Sabin* case:

F *People v Hine*, ___ Mich ___ (2002):

The defendant was convicted by a jury of first-degree felony murder and first-degree child abuse in the death of defendant's girlfriend's two-and-a-half-year-old daughter. The victim, who died from multiple blunt-force injuries, sustained severe internal injuries, numerous circular bruises on her abdomen, and a bruise across the bridge of her nose. The prosecutor sought to introduce "other acts" evidence under MRE 404(b) to show, among other things, a common scheme, plan, or system in perpetrating assaults. Three of defendant's former girlfriends, one of whom was the victim's mother, testified at a pretrial hearing. Two of these witnesses testified that defendant perpetrated "fish hook" assaults on them: a method where defendant put his fingers inside their mouths and forcefully stretched their lips. One witness testified that defendant "head-butted" her, using his forehead to strike her nose. Each of these witnesses also testified that defendant struck, poked, grabbed, threw, and kneed them. The trial court admitted this testimony, but the Court of Appeals reversed defendant's conviction, holding that substantial dissimilarities existed between the assaults on defendant's former girlfriends and the injuries sustained by the victim, and that the danger of unfair prejudice resulting from the admission of such evidence outweighed any marginal probative value. The Michigan Supreme Court remanded

to the Court of Appeals for reconsideration in light of *Sabin, supra*. The Court of Appeals again reversed, finding defendant's assaultive behavior inadmissible under *Sabin* since it was used to prove the "very act" that was the object of the proof, and because of the dissimilarities between the uncharged and charged conduct.

The Michigan Supreme Court reversed the Court of Appeals and remanded the case to that court for consideration of the defendant's remaining appellate issues. The Court stated that the alleged "fish hook" assaults against defendant's former girlfriends were similar to the method or system that could have caused fingernail marks on the victim's cheek. In addition, the bruises on the victim's abdomen were consistent with injuries resulting from being forcefully poked in the abdomen. Noting that evidence of uncharged conduct need only support an inference that a defendant employed a common scheme, plan, or system in committing the charged offense, *Sabin, supra* at 65-66, the Court concluded that the testimony of defendant's former girlfriends contained sufficient commonality with evidence of the causes of the victim's injuries to permit such an inference.

CHAPTER 6

Issuing Personal Protection Orders

6.2 Introduction to Personal Protection Orders

C. Overview of Michigan's PPO Statutes

A personal protection order or minor personal protection order may include a foreign protection order enforceable in Michigan under MCL 600.2950/. MCR 3.708(A)(1) and MCR 5.982(A).

CHAPTER 6

Issuing Personal Protection Orders

6.5 Procedures for Issuing PPOs

C. Ex Parte Proceedings

Effective September 11, 2002, MCR 3.705(A)(2) states that “[i]n a proceeding under MCL 600.2950a [non-domestic stalking PPO], the court must state in writing the specific reasons for issuance of the order.”

D. Hearing Procedures

3. Making a Record

Effective September 11, 2002, MCR 3.705(B)(6) requires a court to state in writing the specific reasons for issuing a non-domestic relations stalking PPO. MCR 3.705(B)(6).

E. Required Provisions in a PPO

Effective September 11, 2002, MCR 3.706(A) was amended to require certain provisions to be contained in a personal protection order. MCR 3.706(A)(2) and (A)(5) now state:

“(2) A statement that the personal protection order is effective when signed by the judge and is immediately enforceable anywhere in Michigan, and that, after service, the personal protection order may be enforced by another state, an Indian tribe, or a territory of the United States.

“(5) A statement that the personal protection order is enforceable anywhere in Michigan by any law enforcement agency, and that if the respondent violates the personal protection order in another jurisdiction, the respondent is subject to the enforcement procedures and penalties of the jurisdiction in which the violation occurred.”

CHAPTER 8

Enforcing Personal Protection Orders

8.2 Overview of PPO Enforcement Provisions

Note that a personal protection order or minor personal protection order may include a foreign protection order enforceable in Michigan under MCL 600.2950l, MCR 3.708(A)(1) and MCR 5.982(A).

CHAPTER 10

Case Management for Safety in Domestic Relations Cases

10.4 Confidentiality of Records Identifying the Whereabouts of Abused Individuals

A. Confidentiality in Friend of the Court Records Generally

MCR 8.119(F)(2) has been amended, effective September 11, 2002. The amendment requires a court to consider the following criteria when determining whether good cause exists to seal court records:

“(a) the interests of the parties, including, where there is an allegation of domestic violence, the safety of the alleged or potential victim of the domestic violence, and

“(b) the interest of the public.”

B. Complaint and Verified Statement

1. Information That Must Be Disclosed

The last paragraph of this sub-subsection refers to MCL 600.659 of the Uniform Child Custody Jurisdiction Act (UCCJA). That provision required parties to disclose a child’s current and past addresses. The Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) superseded the UCCJA. See 2001 PA 195. MCR 3.206(A)(3) was amended effective September 11, 2002. A complaint or affidavit must now contain the information required by MCL 722.1209 of the UCCJEA.

In language very similar to that of its predecessor, this section provides in part that, subject to state confidentiality law regarding identifying information:

“each party, in its first pleading or in an attached sworn statement, shall give information, if reasonably ascertainable, under oath as to the child’s present address, the places where the child has lived during the last 5 years, and the names and present addresses of the persons with whom the child has lived during that period.”

However, MCL 722.1209(5) provides as follows:

“If a party alleges in a sworn statement or a pleading under oath that a party’s or child’s health, safety, or liberty would be put at risk by the disclosure of identifying information, the court shall seal and not disclose that information to the other party or the public unless the court orders the disclosure after a hearing in which the court considers the party’s or child’s health, safety, and liberty and determines that the disclosure is in the interest of justice.”

CHAPTER 13

Custody Proceedings Involving Multiple Jurisdictions

13.7 Record-Keeping Requirements Under the UCCJA

Effective September 11, 2002, MCR 3.214(D) provides for registration and enforcement of another state's custody under MCL 722.1304 of the Uniform Child Custody Jurisdiction and Enforcement Act.

Update: Friend of the Court Domestic Violence Resource Book

CHAPTER 2

Screening and Case Management

2.13 Confidentiality of Records Identifying the Whereabouts of Abused Individuals

A. Confidentiality in Friend of the Court Records Generally

Effective September 11, 2002, MCR 8.119(F)(2) requires a court to consider the following criteria when determining whether good cause exists to seal court records:

“(a) the interests of the parties, including, where there is an allegation of domestic violence, the safety of the alleged or potential victim of the domestic violence, and

“(b) the interest of the public.”

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Screening and Case Management

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Chapter 7

Personal Protection Orders

7.1 Importance of Personal Protection Orders in Domestic Relations Actions

The definition of personal protection order now includes a foreign protection order enforceable in Michigan under MCL 600.2950/. MCR 3.708(A)(1).

Chapter 7

Personal Protection Orders

7.4 Procedures for Issuing PPOs

B. Ex Parte Proceedings

Effective September 11, 2002, MCR 3.705(A)(2) states that “[i]n a proceeding under MCL 600.2950a [non-domestic stalking PPO], the court must state in writing the specific reasons for issuance of the order.”

Chapter 7

Personal Protection Orders

7.4 Procedures for Issuing PPOs

C. Hearing Procedures

Effective September 11, 2002, MCR 3.705(B)(6) requires a court to state in writing the specific reasons for issuing a non-domestic stalking PPO. MCR 3.705(B)(6).

Update: Juvenile Justice Benchbook

CHAPTER 5

Expungement and Setting Aside Adjudications and Convictions

5.3 Setting Aside Juvenile Adjudications

D. Submission of Application to the Attorney General and Prosecuting Attorney

Effective October 1, 2002, 2002 PA 483 expanded the list of “assaultive crimes” in MCL 770.9a. The added offenses are:

- F Assault against Family Independence Agency employee causing serious bodily impairment, MCL 750.81c(3).
- F Intentional assaultive conduct against pregnant individual with intent to cause miscarriage or death to embryo or fetus, MCL 750.90a.
- F Intentional assaultive conduct against pregnant individual causing great bodily harm, serious or aggravated injury, or miscarriage or death to embryo or fetus, MCL 750.90b.
- F Attempted murder, MCL 750.91.
- F A violation of MCL 750.200 to 750.212a [governing explosives, bombs, and harmful devices].
- F Stalking, MCL 750.411h.
- F Aggravated stalking, MCL 750.411i.
- F A violation of MCL 750.543a to 750.543z [governing terrorist crimes].

CHAPTER 5

Expungement and Setting Aside Adjudications and Convictions

5.4 Setting Aside Convictions Following Designated Proceedings

B. Submission of Application to State Police

A copy of an application to set aside a conviction must be accompanied by a \$50.00 fee. 2002 PA 472, amending MCL 780.621(6). Previously, the fee was \$25.00.

C. Submission of Application to the Attorney General and Prosecuting Attorney

Effective October 1, 2002, 2002 PA 483 expanded the list of “assaultive crimes” in MCL 770.9a. The added offenses are:

- F Assault against Family Independence Agency employee causing serious bodily impairment, MCL 750.81c(3).
- F Intentional assaultive conduct against pregnant individual with intent to cause miscarriage or death to embryo or fetus, MCL 750.90a.
- F Intentional assaultive conduct against pregnant individual causing great bodily harm, serious or aggravated injury, or miscarriage or death to embryo or fetus, MCL 750.90b.
- F Attempted murder, MCL 750.91.
- F A violation of MCL 750.200 to 750.212a [governing explosives, bombs, and harmful devices].
- F Stalking, MCL 750.411h.
- F Aggravated stalking, MCL 750.411i.
- F A violation of MCL 750.543a to 750.543z [governing terrorist crimes].

Update: Sexual Assault Benchbook

CHAPTER 10

OTHER REMEDIES FOR VICTIMS OF SEXUAL ASSAULT

10.3 Defenses to Civil Actions

E. The “Impairment” Defense

This subsection of the *Sexual Assault Benchbook* discusses the “impairment” defense in MCL 600.2955a, and includes discussion of a Court of Appeals case, *Piccalo v Nix*, 246 Mich App 27 (2001), which interprets this statutory defense.

The Michigan Supreme Court vacated the Court of Appeals’ opinion in *Piccalo* and remanded the case to the Court of Appeals for reconsideration in light of two previous Michigan Supreme Court opinions, one citing the proper rules of statutory construction, the other rejecting the so-called “absurd result” rule of statutory construction. *Piccalo v Nix*, 466 Mich 861 (2002). In addition, the Supreme Court ordered the Court of Appeals to determine whether there was sufficient evidence to show that plaintiff was 50% or more the cause of the accident or event that resulted in the injury. Upon remand, the Court of Appeals, on August 30, 2002, found that the defendant *was* entitled to the use of the impairment defense and affirmed the judgment of the trial court dismissing the case. *Piccalo v Nix*, ____ Mich App ____ (2002). As part of its analysis, the Court of Appeals began by defining the statutory term “event” through the use of a dictionary definition: “something that happens or is regarded as happening; an occurrence, especially one of some important [sic]” or “the outcome, issue, or result of anything.” The Court then held the following:

“Given this broad definition, there was evidence from which the jury could conclude that plaintiff was fifty percent, or more, the cause of the ‘event’ that resulted in the injury. Plaintiff, who was over eighteen years of age but under the legal drinking age of twenty-one, elected to consume alcohol and become intoxicated.

Plaintiff freely chose to accept a ride home from an intoxicated driver. Plaintiff also chose to ride in an automobile that did not have proper seating or restraints in the rear compartment and which was filled with unrestrained materials including a tire and several tools. Under these circumstances, defendant was entitled to the absolute defense of impairment, and the judgment of no cause of action must be affirmed.” *Id.* at ____.

CHAPTER 11

Sex Offender Identification and Profiling Systems

11.2 Sex Offenders Registration Act

C. Post-Registration Change of Status

Effective October 1, 2002, 2002 PA 542 amended various provisions of the Sex Offenders Registration Act (SORA) to require individuals who are “required to be registered” and who also become a student, full- or part-time employee, contract provider, or volunteer with an institution of higher education to *report* their status in person to an applicable law enforcement agency having jurisdiction over that particular campus. These “campus reporting” amendments are reflected below.

1. In-State Changes

Effective October 1, 2002, 2002 PA 542 amended MCL 28.725(1)(a) to include the requirement that an individual must notify law enforcement within 10 days of “any change required to be reported under section 4a [MCL 28.724a, governing campus reporting].” This language should be inserted following the language at the end of the first bullet on p 519 of the *Sexual Assault Benchbook*.

The following subparagraphs should be added as new subsection (3) of the *Sexual Assault Benchbook* on the bottom of p 519:

3. Campus Reporting

Under MCL 28.724a(1)(a)-(f), an individual required to be registered under the SORA who is **not a resident** of this state must report his or her status in person to the local law enforcement agency or sheriff’s department having jurisdiction over a campus of an institution of higher education, or to a State Police post nearest to that campus, if any of the following occur:

“(a) Regardless of whether he or she is financially compensated or receives any governmental or educational benefit, the individual is or becomes a full- or part-time employee, contractual provider, or volunteer with that institution of higher education and his or her position will require that he or she be present on that campus for 14 or

more consecutive days or 30 or more total days in a calendar year,

“(b) The individual is or becomes an employee of a contractual provider described in subsection (a) and his or her position will require that he or she be present on that campus for 14 or more consecutive days or 30 or more total days in a calendar year.

“(c) The status described in subdivision (a) or (b) is discontinued.

“(d) The individual changes the campus on which he or she is an employee, a contractual provider, an employee or a contractual provider, or a volunteer as described in subdivision (a) or (b).

“(e) The individual is or enrolls as a student with that institution of higher education or the individual discontinues that enrollment.

“(f) As part of his or her course of studies at an institution of higher education in this state, the individual is present at any other location in this state, another state, a territory or possession of the United States, or another country for 14 or more consecutive days or 30 or more total days in a calendar year, or the individual discontinues his or her studies at that location.”

Under MCL 28.724a(2), an individual required to be registered under the SORA who is a **resident** of this state must report his or her status in person to the local law enforcement agency or sheriff's department having jurisdiction where his or her new residence or domicile is located, or the State Police post nearest to the individual's new residence or domicile, if any of the events described in MCL 28.724a(1) occur.

Under MCL 28.724a(3)(a)-(c), an individual required to report under MCL 28.724a(1)-(2) must make his or her report within the following time-frames:

- Not later than January 15, 2003, if the individual is registered under SORA before October 1, 2002.
- On the date he or she is required to register under SORA, if the individual is an employee, a contractual provider, an employee of a contractual provider, a volunteer on that campus, or a student on that campus on October 1, 2002.

- Except as provided in the two preceding subparagraphs, within ten days after the individual becomes an employee, a contractual provider, an employee of a contractual provider, or a volunteer on the campus, or discontinues that status, or changes location, or if he or she enrolls or discontinues his or her enrollment as a student on that campus including study in this state or another state, a territory or possession of the United States or another country.

Under MCL 28.724a(5), the applicable law enforcement agency must require the individual who reports to present written documentation substantiating all of the following:

- Employment status.
- Contractual relationship.
- Volunteer status.
- Student status.

Under MCL 28.724a(5), such “written documentation” may include, but need not be limited to, any of the following:

- A W-2 form, pay stub, or written statement by employer.
- A contract.
- A student identification card or student transcript.

An individual required to report under MCL 28.724a must also verify his or her registration quarterly or yearly, as required under MCL 28.725a(4)-(b). MCL 28.724a(4).

Under MCL 28.722(c)(i)-(ii), an “institution of higher education” means one or more of the following:

- A public or private community college, college, or university.
- A public or private trade, vocational, or occupational school.

As part of this new “campus reporting” legislation, 2002 PA 542 also renumbered the following statutory provisions:

- “Listed offense,” from MCL 28.722(d) to MCL 28.722(e);
- “Municipality,” from MCL 28.722(e) to MCL 28.722(f);
- “Residence,” from MCL 28.722(f) to MCL 28.722(g); and
- “Student,” from MCL 28.722(g) to MCL 28.722(h).

Note: 2002 PA 542 did not amend the definitions of the foregoing statutory terms.

D. The “Registration”

1. Form and Contents

Effective October 1, 2002, 2002 PA 542 added the following item to be contained on a SORA registration:

“Information that is required to be reported under section 4a [MCL 28.724a, governing campus reporting requirements].” MCL 28.727(1)(f).

CHAPTER 11

Sex Offender Identification and Profiling Systems

11.2 Sex Offenders Registration Act

F. Yearly or Quarterly Verification of Domicile or Residence

Effective October 1, 2002, 2002 PA 542 amended MCL 28.725a(5) to require law enforcement officers to verify not only the registered individual's residence and domicile but also "any information required to be reported under section 4a [MCL 28.724a, governing campus reporting]."

1. Yearly Verification ("Misdemeanor Listed Offenses")

Effective October 1, 2002, 2002 PA 542 amended the definition of "misdemeanor listed offense" under MCL 28.725a(4)(a) to include the following offense:

- Accosting, enticing or soliciting a child under 16 for immoral purpose if committed before June 1, 2002, MCL 750.145a.

Note: This statutory change was made to incorporate the Legislature's redesignation of MCL 750.145a from a misdemeanor to a felony, effective June 1, 2002. 2002 PA 45.

2. Quarterly Verification ("Felony Listed Offenses")

Effective October 1, 2002, 2002 PA 542 amended the definition of "felony listed offense" under MCL 28.725a(4)(b) to include the following offense:

- Accosting, enticing or soliciting a child under 16 for immoral purpose if committed on or after June 1, 2002, MCL 750.145a.

Note: This statutory change was made to incorporate the Legislature's redesignation of MCL 750.145a from a misdemeanor to a felony, effective June 1, 2002. 2002 PA 45.

G. Public Notification and the Computerized Databases

Effective October 1, 2002, 2002 PA 542 amended MCL 28.728(3)(b) to require additional information that must be contained within the computerized compilation. Thus, the following information should be inserted after the last bullet on p 524 of the *Sexual Assault Benchbook*:

- F** The name and campus location of each institution of higher education to which the individual is required to report under MCL 28.724a [governing campus reporting].

Furthermore, 2002 PA 542 renumbered the statutory citation containing the required contents of each computerized SORA registration from MCL 28.728(2) to MCL 28.728(3)(a). Accordingly, the statutory citation in the last sentence of the first paragraph under subsection (G) of the *Sexual Assault Benchbook* should be redesignated “MCL 28.728(3)(a).”

CHAPTER 11

Sex Offender Identification and Profiling Systems

11.2 Sex Offenders Registration Act

I. Confidentiality of Registration and Criminal Penalties for Disclosure of Non-Public Information

Effective October 1, 2002, 2002 PA 542 amended MCL 28.730(1) to also protect as confidential any “report under section 4a [MCL 28.724a, governing campus reporting]” in addition to the registration.

Effective October 1, 2002, 2002 PA 542 amended the maximum penalties for an individual who violates MCL 28.730(4) (divulging, using, or publishing nonpublic information concerning registrations in violation of SORA) from 90 days and/or \$500.00 to **93 days and/or \$1,000.00**.

J. National Reporting of Michigan Registrations

Effective October 1, 2002, 2002 PA 542 added the following agencies that must receive SORA’s registration, notice, and verification information under MCL 28.727(8):

- F Sheriff’s departments; and
- F State Police posts.

1. Public Inspection At Law Enforcement Agencies During Regular Business Hours

Effective October 1, 2002, 2002 PA 542 added the following requirement under MCL 28.728(4):

“The [State Police] shall provide the ability to conduct a computerized search of the compilation based upon the name and campus location an institution of higher described in subsection (3)(b) [MCL 28.728(3)(b)].”

K. Registration Violation Enforcement; Venue and Penalties

2. Penalties

Effective October 1, 2002, 2002 PA 542 amended the maximum penalties for an individual who fails to comply with MCL 28.725a (yearly and quarterly verification) from 90 days or a maximum fine of \$500.00 to **93 days or a maximum fine of \$1,000.00**. MCL 28.729(2).

Effective October 1, 2002, 2002 PA 542 amended the maximum fine for an individual who willfully fails to sign a registration, notice, or verification as provided in MCL 28.727(4) (registration form) from \$500.00 to **\$1,000.00**. MCL 28.729(3).

October 2002

Update: Traffic Benchbook— Revised Edition, Volume 1

CHAPTER 1

Required Procedures for Civil Infractions

1.34 Civil Fines

Insert the following quoted language as the last sentence of the last bullet in Section 1.34:

“However, effective October 1, 2002, 2002 PA 534 amended MCL 257.907(3) by authorizing a civil fine of not more than \$10,000.00 for commercial vehicle drivers who are responsible or responsible “with explanation” for civil infractions under MCL 257.319g [which includes violations for improper railroad crossings and various federal motor carrier safety regulations].”

CHAPTER 2

Civil Infractions

2.5 Railroad Crossings

A. General Rules for Railroad Crossings

Effective October 1, 2002, 2002 PA 534 amended MCL 257.667(2) by adding language that prohibits a driver of a vehicle from going against the direction of a police officer at railroad crossings. Thus, sub-subparagraph (2) on p 2-15 should now read as follows:

“A person shall not drive a vehicle through, around, or under a crossing gate or barrier at a railroad crossing while the gate or barrier is closed or is being opened or closed or against the direction of a police officer.”

Effective October 1, 2002, 2002 PA 534 amended MCL 257.668(1) by changing the minimum distance a driver of a vehicle should stop from a railroad crossing from 10 feet to 15 feet. Thus, the second paragraph in sub-subparagraph (3) on p 2-15 should now read as follows:

“Stop crossings—[T]he driver of a vehicle shall stop not more than 50 feet but not less than 15 feet from the railway tracks. The driver shall then traverse the crossing when it may be done in safety.”

Update: Traffic Benchbook— Revised Edition, Volume 2

CHAPTER 2

Procedures in Drunk Driving and DWLS Cases

2.2 Police Authority to Arrest Without a Warrant

A. Statutory Authority

Effective October 1, 2002, 2002 PA 483 amended MCL 764.2a by expanding police jurisdiction over various criminal offenses and civil infractions. MCL 764.2a(1)(a)-(c) now authorizes county, city, village, township, and university peace officers to exercise their authority outside their municipality's geographical boundaries in any of the following circumstances:

- F If the officer is enforcing a law of this state in conjunction with the Michigan State Police.
- F If the officer is enforcing a law of this state in conjunction with a peace officer of any county, city, village, township, or university in which he or she may be.
- F If the officer has witnessed an individual violate any of the following within the geographical boundaries of the officer's municipality or university and immediately pursued the individual outside of that boundary:
 - A law of this state or administrative rule;
 - A local ordinance;
 - A law of this state, administrative rule, or local ordinance that is a civil infraction, municipal civil infraction, or state civil infraction.

Additionally, MCL 764.2a now provides that an officer pursuing an individual in any of the foregoing circumstances may stop and detain the individual outside the geographical boundaries of the officer's municipality or university for the purpose of enforcing that law, administrative rule, or ordinance or enforcing any other law, administrative rule, or ordinance before, during, or immediately after detaining the individual. MCL 764.2a(2). Furthermore, "if the violation or pursuit involves a vessel moving on the waters of this state, the officer pursuing the individual may direct the operator of the vessel to bring the vessel to a stop or maneuver it in a manner that permits the officer to come beside the vessel." *Id.*

CHAPTER 2

Procedures in Drunk Driving and DWLS Cases

2.6 Arraignment/Pretrial Procedures

E. Guilty and Nolo Contendere Pleas

1. Prerequisites for Accepting a Plea — Advice to the Defendant

Effective September 1, 2002, MCR 6.302(B)* was amended in part to eliminate the requirement that a court advise the defendant of the circumstances in which it has discretion to appoint appellate counsel. Thus, former MCR 6.302(B)(7) has been deleted. The advice formerly contained in MCR 6.302(B)(7) remains in MCR 6.425(E)(2)(c), the court rule governing the right to appeal and appointment of appellate counsel.

*This court rule governs cases cognizable in circuit court.